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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 DONALD E. BOOKER,

12 Plaintiff,

13 v.

14 D. LEE, et al.,

15 Defendants.  
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Case No. 2:22-cv-07258-SPG-JC

**ORDER (1) ACCEPTING IN PART  
AND DECLINING TO ACCEPT IN  
PART, FINDINGS, CONCLUSIONS,  
AND RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE  
JUDGE; (2) AFFORDING PLAINTIFF  
LEAVE TO AMEND; AND (3)  
DENYING MOTION FOR LEAVE TO  
FILE AMENDED COMPLAINT AS  
MOOT**

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20 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint, the Motion to  
21 Dismiss (“Motion”) filed by Defendants D. Lee, J. Garibay, R. Castellanos, and J. Williams  
22 (“Defendants”), and all of the records herein, including the October 2, 2023 Report and  
23 Recommendation of United States Magistrate Judge (“Report and Recommendation”).  
24 The Report and Recommendation correctly notes that Plaintiff did not file an Opposition  
25 to the Motion and recommends that the Court grant the Motion because the Complaint  
26 violates Rule 8 of the Federal Rules of Civil Procedure and fails to state a claim for relief,  
27 and that the Court dismiss this action without prejudice for failure to prosecute and to  
28 comply with a court order in light of Plaintiff’s failure to respond to the Motion despite  
having been ordered to do so and having been cautioned that such failure may result in

1 dismissal of this action. Plaintiff did not file any objections to the Report and  
2 Recommendation. However, on November 13, 2023, Plaintiff filed a Motion for Leave to  
3 File Amended Complaint (“Motion to Amend”), suggesting that he has not in fact  
4 abandoned this action and instead wishes to proceed.

5 This Court agrees with and adopts the facts and procedural history set out in  
6 the Report and Recommendation, as well as its analysis, findings, and conclusions relative  
7 to the deficiencies in the Complaint, and accordingly also accepts and adopts the Report  
8 and Recommendation, to the extent it recommends that the Court grant the Motion and  
9 dismiss the Complaint. However, in light of Plaintiff’s expression of interest in pursuing  
10 this action and the otherwise applicable liberal amendment standards and standards  
11 governing consideration of matters brought by self-represented individuals, the Court  
12 deems it appropriate to afford Plaintiff leave to amend and accordingly declines to adopt  
13 the Report and Recommendation, insofar as it recommends dismissal of the action based  
14 on Plaintiff’s failure to prosecute and to comply with a court order.

15 IT IS THEREFORE ORDERED:

- 16 1. The Motion is granted and the Complaint is dismissed with leave to amend.  
17 2. Within twenty-one (21) calendar days of the date of this Order, Plaintiff must  
18 do one of the following:  
19 a) File a First Amended Complaint which cures the pleading defects set  
20 forth in the Report and Recommendation; or  
21 b) File a Notice of Dismissal which will result in the voluntary  
22 dismissal of this action without prejudice; or  
23 c) File a Notice of Intent to Stand on Complaint, indicating  
24 Plaintiff’s intent to stand on the original Complaint despite the pleading defects set forth  
25 in the Report and Recommendation, which may result in the dismissal of this action in its  
26 entirety based upon such defects.

27 Plaintiff is cautioned that Plaintiff’s failure timely to file a First Amended  
28 Complaint, a Notice of Dismissal, or a Notice of Intent to Stand on Complaint may be

1 deemed Plaintiff's admission that amendment is futile, and may result in the dismissal of  
2 this action with or without prejudice based on the deficiencies in the Complaint identified  
3 in the Report and Recommendation, based on the ground that amendment is futile, and/or  
4 based on Plaintiff's failure diligently to prosecute and/or failure to comply with this Order.

5 4. In light of the foregoing, Plaintiff's Motion to Amend is moot and is  
6 denied as such.

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8 IT IS SO ORDERED.

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10 Dated: March 26, 2024



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HON. SHERILYN P. GARNETT  
U.S. DISTRICT COURT JUDGE